

United States Postal Service and National Postal Mail Handlers' Union Local 300, Division of L.I.U.N.A., AFL-CIO, CLC. Case 29-CA-15550(P)

August 26, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On April 15, 1992, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed a cross-exception and a brief in answer to the Respondent's exceptions, the Respondent filed a brief in answer to the General Counsel's cross-exception, and the General Counsel filed a response to the Respondent's answering brief.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order² as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Hicksville, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Furnish the Union with copies of the requested daily absence reports for bargaining unit employees on Tour One, of the 185 West John St., Hicksville, New York postal facility; copies of the requested weekly casual rosters for Tour One of the same facility; and copies of the requested daily ATAL reports for Tour One of the same facility, retroactive to the date of the Respondent's failure to supply such information."

¹ Member Oviatt would have denied the Respondent's late-filed answering brief.

² In adopting the judge's findings and conclusions with regard to the Respondent's unlawful refusal to provide the Union with relevant requested information, we are clarifying the recommended remedial order in accordance with the General Counsel's cross-exception. Specifically, the Respondent is ordered to provide the Union with copies of the requested information retroactively to the date of the Respondent's refusals to furnish the information. The availability of the information and the methods by which the Respondent can retrieve the data are matters that are best handled through the compliance procedure.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with National Postal Mail Handlers' Union, Division of L.I.U.N.A., AFL-CIO, CLC, and its agent, National Postal Mail Handlers' Union Local 300, Division of L.I.U.N.A., AFL-CIO, CLC, by refusing to furnish with the requested information concerning daily absence reports, weekly casual rosters, and daily ATAL reports.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish the Union with copies of the requested daily absence reports for bargaining unit employees on Tour One, of the 185 West John St., Hicksville, New York postal facility; copies of the requested weekly casual rosters for Tour One of the same facility; and copies of the requested daily ATAL reports for Tour One of the same facility, retroactive to the date of the Respondent's failure to supply such information.

UNITED STATES POSTAL SERVICE

Sharon Chau, Esq. and *Joel Friedman, Esq.*, for the General Counsel.

Carl Bosland, Esq., of Windsor, Connecticut, for the Respondent.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Brooklyn, New York, on January 21, 1992. Upon a charge filed on February 28, 1991,¹ a complaint was issued on May 6, alleging that the United States Postal Service (Respondent or the Postal Service) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The complaint alleged that Respondent failed to furnish certain information requested by National Postal Mail Handlers' Union Local 300, Division of L.I.U.N.A., AFL-CIO, CLC (the Union). Respondent filed an answer denying the commission of the alleged unfair labor practices.

¹ All dates refer to 1991 unless otherwise specified.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by the General Counsel and by Respondent.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Board has jurisdiction in this matter pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. §§ 1209.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges that the Union is a labor organization within the meaning of Section 2(5) of the Act and is the exclusive representative of the employees in the appropriate unit. Respondent admits that the National Postal Mail Handlers' Union (NPOMHU) is a labor organization within the meaning of Section 2(5) of the Act and does not dispute Steward Lawrence Hill's right to request information on its behalf. Hill testified that Local 300 is an affiliate of NPOMHU and exists for the purpose of dealing with grievances, labor disputes, wages, hours, and working conditions. For the purposes of this proceeding it is not necessary that I resolve the issue whether Local 300 is a labor organization within the meaning of the Act. I do find, however, that NPOMHU is a labor organization within the meaning of Section 2(5) of the Act and that Local 300 is its agent. See *Postal Service*, 301 NLRB 709 (1991).

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Background

At all times relevant to this proceeding, Respondent was party to a collective-bargaining agreement (National Agreement) with NPOMHU. The National Agreement contains provisions regarding the supplemental work force, which is comprised of casual employees. Casual employees, who are not members of the bargaining unit represented by the NPOMHU, are those employees who may be utilized as a limited-term supplemental work force but may not be used in lieu of full- or part-time employees. Under the National Agreement, the number of casuals shall not exceed 10 percent, on a division basis, of the total number of employees.

In January 1991, Hill, steward at the Hicksville facility, spoke to certain casual employees and discovered that they were performing mail handler work nearly 100 percent of the time. Suspecting that there may be a violation of the agreement, he made written requests for information on January 29, February 5 and 6, March 25, and April 22, for three types of documents: copies of daily absence reports, for bargaining unit employees on Tour One at the Hicksville facility; copies of the weekly casual roster at the same facility; and copies of all daily Attendance, Time, and Leave (ATAL) reports for the same facility. Initially, Respondent provided the Union with the requested information. However, once Postal Service Labor Relations Representative Ilir Tsungu become involved with the information requests, the Postal

Service determined that Hill was not entitled to the requested information, and, consequently, no longer furnished that information. Respondent's position is that the Union has waived its right to the additional information because the contract does not require that such information be furnished. In addition, Respondent argues that the information requested is not relevant because the 10-percent limitation is on a divisional basis and the information requested is for only one pay location.

B. Discussion and Conclusions

1. Waiver

The duty to furnish information is a statutory obligation which exists independent of any agreement between the parties. *American Standard*, 203 NLRB 1132 (1973). Although a union may relinquish a statutory right, any waiver of such a right, however, must be clear and unmistakable. As the Board stated in *Bozzuto's, Inc.*, 275 NLRB 353 (1985):

The Respondent . . . argues that the following contractual provision limited the information to which the Union is entitled and thus waived the Union's right to the addresses We do not agree. The provision specifies what information to include in a seniority list. The clause does not provide that other information need not be disclosed to the Union We find that the contract does not clearly and unmistakably waive the Union's right

The National Agreement sets forth information which the Postal Service must provide. Section 7.1 provides that the Postal Service will provide the Union, at the division level, with a report listing the number of mail handler casuals at facilities within the division. The agreement does not provide that only that information shall be furnished. I find that there has not been a clear and unmistakable waiver by the Union of the right to the additional information it requested.

2. Relevance

The National Agreement limits the number of casual employees the Postal Service can employ to 10 percent of the regular work force calculated on a division basis. Hill requested casual employee information for one pay location on one Tour at the Hicksville facility. Respondent argues that there are other facilities within the Long Island division and other pay locations and Tours which may employ casual employees. Therefore, Respondent argues that "the limited information requested by Steward Hill is not relevant because it could not establish a violation of the percentage limitation provision of the National Agreement."

Respondent appears to be arguing that the information is not relevant because not enough information is requested. Since a violation can only be calculated on a division basis, by merely asking for information at one facility it would not provide sufficient information to ascertain whether there was a violation on a division basis. However, when Respondent's representative, Tsungu, was asked whether the Postal Service would be willing to provide this information on a divisional basis he testified that Respondent would be unwilling to do so. The Board has long held that "an employer must furnish information that is of even probable or potential relevance to

the union's duties." *Conrock Co.*, 263 NLRB 1293, 1294 (1982), *enfd. mem.* 735 F.2d 1371 (9th Cir. 1984). I believe that while information on a divisional basis certainly would be more informative than information for just one facility, the information even of the one facility is of "potential relevance to the union's duties." If the Union ascertains that the 10-percent limitation is not being adhered to at the local level it can then request information on a broader level. I conclude, therefore, that the information requested by the Union is relevant to its duties as the representative of the employees in the appropriate unit.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. §§ 1209.

2. NPOMHU is a labor organization within the meaning of Section 2(5) of the Act and Local 300 of L.I.U.N.A., AFL-CIO, CLC, is its agent.

3. At all relevant times the Union has been the exclusive collective-bargaining representative of the employees in the following appropriate unit:

The unit of employees as set forth within Article 1.1 of the collective-bargaining agreement between Respondent and the Union, effective by its terms from July 21, 1987 through November 20, 1990.

4. By refusing to furnish the Union with information concerning daily absence reports, weekly casual rosters, and daily ATAL reports, Respondent has violated Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and rec-

ORDER

The Respondent, United States Postal Service, Hicksville, New York, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with National Postal Mail Handlers' Union Local 300, Division of L.I.U.N.A., AFL-CIO, CLC, by refusing to furnish it with the requested information concerning daily absence reports, weekly casual rosters, and daily ATAL reports.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union with copies of the requested daily absence reports for bargaining unit employees on Tour One, of the 185 West John St., Hicksville, New York postal facility; copies of the requested weekly casual rosters for Tour One of the same facility; and copies of the requested daily ATAL reports for Tour One of the same facility.

(b) Post at its facility in Hicksville, New York, copies of the attached notice marked "Appendix."³ Copies of the notice on forms provided by the Regional Director for Region 29, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."